

REMARKS

The Examiner's remarks have been carefully considered and the prior patents cited and applied have been carefully studied.

Applicant has cancelled claims 2-44 and has amended claim 1 without any intention of acquiescing as to the pertinency of the prior patents but to more clearly define applicant invention and to eliminate possible ambiguities.

Claim 1 remains in the application.

It is believed that the amendment to the claims overcomes the Examiner's rejection of some of the original claims under Section 112.

The present invention comprises a frame having an edge rail and a web extending from said edge rail at right angles thereto. The edge rail is wider than the thickness of said web. A web opening is provided in the web, a capsule assembly is mounted at the web opening. The capsule assembly comprises a transparent capsule having a liquid therein and outer cover plates mounted over said capsule on each side of said web. The volume of the liquid in the capsule is less than the volume of the interior of said capsule so that the upper surface of the liquid is viewable through the transparent capsule. The capsule is formed of opposed flat side walls

parallel to each other, opposed end walls parallel to each other and at right angles to the side walls and a bottom wall at right angles to said end walls and said side walls and to said bottom wall. An open top is formed opposite said bottom wall and a flat cover is removably mounted in the open top to close the open top. The width of the bottom wall is less than the width of the side walls. An end flange extends from each of the end walls and abut against the web. Fastening means are provided to fasten the end flanges to the web. The fastening means extend through the end flange and into the web. The bottom wall having a bottom flange extending therefrom which abuts against the web. The side walls have reference line markings thereon. The outer cover plates being affixed to each other from opposed sides of the web. The outer cover plates comprise a front face having a window through which the capsule may be seen and a peripheral wall extending from the front face and adapted to bear against the web adjacent to the capsule. A notch is provided in the end flanges of the capsule and a fastening member extends from the front face of one of the outer cover plates through the notch and into the front face of the outer cover plate. The window in each of the cover plates have a peripheral ridge extending inwardly and adapted to abut against the entire flat, side walls of the capsule on either side thereof.

None of the prior patents either alone or in combination with each other either anticipate applicant's invention nor render it obvious.

Patent No. 3593428 shows a level with a circular capsule. This is quite different from applicant's level which comprises a capsule having flat sides and bottom end walls and a cover particular to the side walls. Hence, this patent does not anticipate.

Patent No. 5,111,369 also shows a circular capsule. It has none of the features of applicant's invention, hence, the patent does not anticipate.

Patent No. 5,749,152 shows a level with a flat capsule having flat side walls and perpendicular said bottom walls. None of the other features of applicant's invention are shown in this patent. For example, the edge rail is not wider than the thickness of the web. The patent does not have a bottom wall perpendicular to the side walls and an opposed open end closed by a removable cover nor does it show the bottom wall much narrower than the side wall. In this patent the wider side wall is removable. In applicant's invention, a narrow top cover is removable. Moreover, this patent does not show any flanges whatsoever nor any cover plates. Hence, this patent does not anticipate.

The Examiner has suggested the combination of the above three patents. Applicant submits that even when combined the three patents would not render applicant's invention obvious. Still lacking from the combination would be a level with a flat capsule having flat wider side walls perpendicular to a narrow bottom wall. In addition, the edge rail would not be wider than the thickness of the web. Hence, even when combined, the resulting structure would not render applicant's invention obvious.

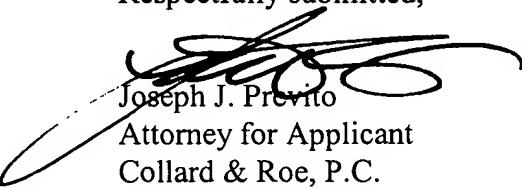
Since none of the prior patents either alone or in combination with each other anticipate applicant's invention nor render applicant's invention obvious, allowance is respectfully requested.

Dated: August 1, 2005

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on August 1, 2005


Joseph J. Previto

Respectfully submitted,


Joseph J. Previto
Attorney for Applicant
Collard & Roe, P.C.
1077 Northern Boulevard
Roslyn, New York 11576
(516) 869-5950